

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

DANNY A. PADILLA,

Plaintiff,

v.

Civ. No. 18-1116 KG/GJF

WARDEN BOWEN
DEPARTMENT OF CORRECTIONS,

Defendant.

ORDER TO CURE DEFICIENCIES

THIS MATTER is before the Court on Plaintiff's pro se handwritten filing, "Motion for Prohibitor Injunction." ECF No. 1. The Court determines that the pro se filing is deficient because (1) it is not in proper form and (2) Plaintiff has not paid the \$400 filing fee or filed an "Application to Proceed in the District Court Without Prepaying Fees and Costs" in proper form.

Plaintiff is incarcerated at Northeastern New Mexico Detention Facility in Clayton, New Mexico. *Id.* at 5-6. He seeks a preliminary injunction "to refrain the respondents from acting on any transfer of the Petitioner to any other facility." *Id.* at 2. Plaintiff's filing challenges the conditions of his confinement and appears to assert § 1983 civil rights claims against New Mexico state facilities or officials. *Id.* at 2-5. *See Wiley v. Holt*, 42 F. App'x 399, 400 (10th Cir. 2002) (claims regarding prison facility transfers are properly treated as § 1983 civil rights claims, since such claims challenge the conditions of confinement, not the validity or duration of incarceration). Plaintiff's filing, however, is not in proper form to assert civil rights claims.

In addition, under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to either collect the federal filing fee from Plaintiff or, upon proper showing, authorize Plaintiff to proceed without prepayment of the fee. Plaintiff, however, did not pay the filing fee but instead submitted a hand-

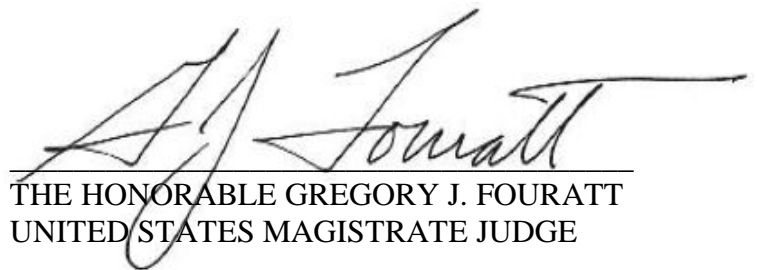
written “Motion for Free Process.” ECF No. 2. Plaintiff must either pay the \$400.00 filing fee or submit an application to proceed under § 1915 in proper form, which includes a statement showing the activity on Plaintiff’s inmate trust account for the 6-month period preceding Plaintiff’s filing. *See* 28 U.S.C. § 1915(a) and (b).

These deficiencies must be cured **on or before January 3, 2019**, or the Court may dismiss this proceeding without further notice. Plaintiff must include the civil action number, Civ. No. 18-1116 KG/GJF, on all papers he files in this proceeding.

IT IS THEREFORE ORDERED that, **on or before January 3, 2019**, Plaintiff cure the deficiencies by (1) filing a prisoner civil rights complaint in proper form and (2) paying the \$400 filing fee or submitting an “Application to Proceed in the District Court Without Prepaying Fees and Costs” in proper form.

IT IS FURTHER ORDERED that the Clerk of the Court is directed to mail to Plaintiff, together with a copy of this order, (1) a prisoner civil rights complaint form under 42 U.S.C. § 1983, with instructions, and (2) two copies of an “Application to Proceed in the District Court without Prepaying Fees and Costs” under 28 U.S.C. § 1915, with instructions.

IT IS SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE